

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Application to Assign Licenses Under Second)	WT Docket No. 13-85
Thursday Doctrine from Maritime)	
Communications/Land Mobile, LLC Debtor-In-)	FCC File No. 0005552500
Possession To Choctaw Holdings, LLC, Request)	
for Waiver and Extension of Construction, And)	
Request to Terminate Hearing)	

To: Honorable Marlene H. Dortch
Secretary of the Commission

Attn: Chief, Wireless Telecommunications Bureau

PETITION TO DENY

Council Tree Investors, Inc. (“Council Tree”) respectfully requests that the Federal Communications Commission (the “Commission”) deny the above-referenced application (the “Application”) to assign certain Automated Maritime Telecommunications Systems licenses (the “AMTS Licenses”) held by Maritime Communications/Land Mobile, LLC, Debtor-in-Possession (“MCLM”), to Choctaw Holdings, LLC (“Choctaw”).

I. OVERVIEW

MCLM and Choctaw (collectively, the “Applicants”) are seeking the consent of the Commission to assign the AMTS Licenses held by MCLM to Choctaw. In particular, the Applicants are seeking approval under the *Second Thursday*¹ exception to the general policy against granting assignment applications where the assignor’s character qualifications have been

¹ *Second Thursday Corp.*, Memorandum Opinion and Order, 22 F.C.C. 2d 515 (1970), *recon. granted in part*, 25 F.C.C. 2d 112 (1970).

designated for hearing. As the Applicants state in the Application, “[t]he Second Thursday doctrine creates an exception from this prohibition in order to accommodate bankruptcy law and *protect innocent creditors.*”² However, the Second Thursday doctrine also requires that “the individual(s) charged with misconduct would *derive little or no benefit* from the transaction.”³

Council Tree contends that, as currently structured, the transaction does not meet the requirements of the Second Thursday doctrine. Specifically, the approval of the Application should be denied because MCLM’s principals Sandra M. DePriest and her husband Donald DePriest (together, the “DePriests”), who are involved in a character qualification hearing before the FCC, *have already derived significant benefits* from the assignment contemplated by the Application and *will derive further substantial benefits* from approval of the Application.

Council Tree does not dispute that MCLM could in fact construct an assignment of MCLM’s AMTS Licenses that meets the public interest requirements, but only if such assignment application is submitted by a qualified third party applicant and without benefit to the DePriests.

Council Tree supports the transfer of certain licenses under the pre-existing bonafide contracts to entities that serve the public interest,⁴ provided however, that the funds are escrowed pending resolution of the remainder of the AMTS licenses in a possible license transfer that does meet the requirements of the Second Thursday doctrine.

² Description of Transaction, Public Interest Statement and *Second Thursday* Showing, attached to the Application, at 6 (emphasis added).

³ *Id.* at 7 (emphasis added).

⁴ These buyers consist of parties with existing purchase contracts with MCLM which include Southern California Regional Rail Authority, Atlas Pipeline Mid-Continent LLC, Dixie Electric Membership Corporation, Inc., Enbridge Energy Company, Inc and EnCana Oil & Gas (USA) Inc., Jackson County Rural Electric Membership Corporation, etc.

II. CHOCTAW'S PROPOSED TRANSFER DOES NOT MEET THE SECOND THURSDAY DOCTRINE REQUIREMENTS

In the Application, the Applicants contend that “the DePriests have no role in Choctaw and will play no future role with respect to any of the licenses,”⁵ and that “the DePriests will receive no cognizable benefit from the proposed transaction.”⁶ Contrary to this assertion it appears from a review of the record already before the Commission and that developed at the Bankruptcy Court that the DePriests have and will continue to derive very substantial benefits from the proposed transactions. Council Tree believes that the record to date, together with the thorough fact finding that the Commission will conduct in this case, will establish the following:

- A long-term pattern of corruption and obfuscation by the DePriests,⁷
- A close, sixteen-year relationship between the DePriests and the principals of Choctaw,⁸
- A substantial (over \$11 million) and still-existing liability of the DePriests in the form of personal guarantees,⁹
- A concerted and successful effort by the DePriests to retain and exercise control of MCLM, thereby steering the bankruptcy proceeding to the benefit of Choctaw,
- A forbearance to-date by the principals of Choctaw on enforcing in excess of \$8.4 million of personal guarantees made by the DePriests to the Choctaw principals,

⁵ *Id.* at 8.

⁶ *Id.*

⁷ See Maritime Communications/Land Mobile, LLC, *Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing*, EB Docket No. 11-71, 26 FCC Rcd 6520 (2011) (*OSC/HDO*).

⁸ See Exhibit A attached herewith for further detail.

⁹ See Exhibit B attached herewith for further detail.

- A release of the DePriests from a liability of over \$438,102 in return for still-uncertain consideration,¹⁰ and
- A claim (unasserted by MCLM while Sandra DePriest remains as its CEO) for a preferential payment of \$153,568.68 from MCLM to the DePriests within 90 days prior to the bankruptcy filing.¹¹

Council Tree contends that, in effect, the Applicants propose a “wash transaction” in which the preceding facts are ignored, in turn providing substantial benefits to parties charged by the Commission with severe misconduct. Commission approval of such a transaction will establish a troublesome precedent that cannot be reconciled with the Commission’s duty to ensure the integrity of the licensing process. The key considerations are detailed as follows:

1. The Tangled Web. The DePriests, MCLM, and the principals and managers of Choctaw (collectively, the “Insider Parties”), have created over time a deeply-entangled, often opaque web of relationships. The bankruptcy proceedings¹² revealed previously-undisclosed depths to these relationships¹³. Before it can act on the Application, the Commission must, in the interests of integrity and transparency, fully examine this web. Summaries and charts, along with specific examples of certain unanswered questions regarding these inter-twined

¹⁰ *In re Maritime Communications/Land Mobile, LLC*, No. 11-13463-DWH (Bankr. N.D. Miss. 2011). First Amended Disclosure Statement. Document 570, at 15 dated July 27, 2012.

¹¹ *In re Maritime Communications/Land Mobile, LLC*, No. 11-13463-DWH (Bankr. N.D. Miss. 2011). Statement of Financial Affairs. Document 46, at 2 filed September 7, 2011.

¹² *In re Maritime Communications/Land Mobile, LLC*, No. 11-13463-DWH (Bankr. N.D. Miss. 2011).

¹³ These include (a) unexplained transactions involving \$438,102 in debt forgiveness in 2012 between Donald DePriest and an entity run by Choctaw principals, and (b) previously-undisclosed employment contracts between MCLM and MCLM’s manager, John Reardon, executed by Donald DePriest (that conflict with MCLM’s assertion that Donald DePriest did not have de facto control of MCLM).

relationships are provided in Exhibits A and B to this Petition to Deny, excerpted from the bankruptcy court record.

2. The “Inside Deal” and the DePriests’ Control by Design. The current qualification hearing before the Commission resulted in large part from the actions of Sandra DePriest as the CEO of MCLM. The design of the bankruptcy Plan of Reorganization was also a product of her substantial involvement and control. We believe it is a fair observation that Ms. DePriest doggedly supported the “Choctaw Plan” in Bankruptcy Court while barely, if at all, engaging as CEO with the comparable and arms-length “Council Tree Plan.”¹⁴ At this point, the Commission must ask why this is so. Council Tree believes that the answer is clear: The Commission should find that this is nothing more than an improper “inside deal” where the DePriests provided their support for the Choctaw plan in return for (a) existing transfers of value to the DePriests, as listed above, and (b) the forbearance and potential elimination of personal guarantee obligations of the DePriests.

3. The Substantial Benefit to the DePriests. Regardless of the exact value of the AMTS Licenses subject to the Bankruptcy Court’s jurisdiction, the amount of the DePriests personal guarantees (over \$11 million) is substantial in both absolute and relative terms. These

¹⁴ By the time Council Tree, as a third party potential buyer, made an offer in the Bankruptcy Court, Sandra DePriest, despite an apparent conflict of interest, was continuing as CEO of MCLM. This status was not challenged by the Inside Parties and facilitated a confirmation plan that ultimately provided substantial benefits to the Inside Parties, including the DePriests. Council Tree recognizes that the bankruptcy process encourages a level of “horse trading” between interested parties and is not suggesting wrongdoing at the Bankruptcy Court level. Council Tree also recognizes that it is exactly this horse trading and confirmation plan end result that runs afoul of the Second Thursday provisions by benefiting the alleged wrongdoers, the DePriests. The Commission, however, is not a bazaar. The Commission’s required public interest scrutiny necessitates a far broader and more exacting understanding of the benefits that flowed to the DePriests as a result of the actions taken by them, and the Insider Parties more generally, during the course of the Bankruptcy process.

guarantees represent more than 35% of the approximately \$30 million of creditor claims. By no stretch of the imagination can elimination or sustained forbearance of such excessive liability exposure be characterized as “minor.”¹⁵

4. The DePriests Have Already Benefited By Guarantees Not Being Enforced.

Members of the Choctaw group (the “Choctaw Members”) hold much of the \$11 million of DePriest guarantees (the “Guarantees”). Even after MCLM’s August 1, 2011 filing for bankruptcy, however, it appears that the Choctaw Members have not attempted to collect on the Guarantees.¹⁶ In a typical arms-length situation, one would expect the Choctaw Members to have already taken action to enforce and collect under the Guarantees. Because the Choctaw Members have not attempted to enforce the Guarantees, the DePriests have already benefited from a guarantee enforcement forbearance. In addition to the benefits of prolonged delay in enforcement of the guarantees, the DePriest may well receive a further substantial benefit by elimination of their \$11 million of guarantees.¹⁷

¹⁵ Cf. *Mobilemedia Corp., Application for Authorization and Licenses of Certain Stations in Various Services*, WT Docket No. 97-115, Memorandum Opinion and Order, 14 FCC Rcd 8017, 8023 ¶ 21 (benefit to party charged with wrongdoing was “miniscule” at 0.14 percent).

¹⁶ As disclosed in Choctaw’s ownership filing (FCC File No. 0005589814), two of MCLM’s secured lenders, Hayne Hollis and Watson & Downs Investments, LLC, are also investors in Choctaw. Council Tree commends to the Commission consideration that the secured lenders’ decision to refrain from enforcing Donald DePriest’s personal guarantees is only explainable as a quid pro quo understanding in which: (a) the secured lenders have and will refrain from exercising the guarantees, and (b) in return for Donald DePriest and his wife Sandra DePriest’s (MCLM’s sole and controlling shareholder) substantial support of Choctaw in the bankruptcy disposition. The quid pro quo is consistent with 16+ year history of the parties working together (DePriest, Trammell, Hollis and Watson via Southeastern Commercial Finance).

¹⁷ It is well-established that, when a party has given a personal guarantee for a debt, an unrelated third-party who satisfies the debt is entitled to subrogation of the guarantee. Thus, if a third-party (such as an unrelated entity financing a bankruptcy reorganization) steps in and satisfies the debts guaranteed by the DePriests, this does not let the DePriests off the hook and release them from the guarantee. To the contrary, such third party is entitled to subrogation of the guarantee

This situation is of course far from normal and hardly an arms-length transaction. The Commission should find that this transaction has the earmarks of an “inside-deal” to steer assets one way, from MCLM to Choctaw, in return for relief from a guarantee.

5. Sale of the DePriests’ Interest in Southeastern Commercial Finance (“SECF”) Appears To Be Another Attempted Second Thursday Work Around. Since 1996 Donald DePriest had been a 10.52% shareholder in SECF until, on an unspecified date, SECF forgave a debt of \$438,102 owed by Donald DePriest to SECF in return for his 10.52% equity interest in SECF. Other transaction terms have not been specified. It does not appear to be a coincidence that this debt forgiveness for equity swap occurred on the doorstep of the filing of the Application requesting *Second Thursday* treatment. Even to a less than skeptical observer, this transaction appears hastily designed to eliminate Donald DePriest as a shareholder of SECF in order to avoid the perception that as an SECF shareholder he would benefit from the sale of MCLM’s licenses to Choctaw (where the SECF shareholders, which included certain of the Choctaw parties, will benefit from repayment of the loan and the issuance of equity to certain others of the Choctaw parties). In addition, it is not clear whether Donald DePriest’s ownership interest in SECF was even worth the \$438,102 of debt that was forgiven. If it was worth less than that amount, Donald DePriest received consideration in excess of the value of his interest, and therefore received yet another benefit as a result of SECF and the Applicants’ efforts in this proceeding. Further, even assuming the values were equal, by receiving a return of his equity value in the form of debt forgiveness, Donald DePriest has received the benefit of a priority return of his equity capital. This is a benefit not provided to other SECF shareholders who may

whereby the third party can itself continue to seek recovery from the DePriests. The guarantees in this case are an important asset that would survive in any normal, arms-length commercial transaction. Moreover, it cannot be said that the underlying debts will be satisfied by the assets in this reorganization.

still be awaiting their return of capital. Mr. DePriest is in effect jumping to the front of the repayment queue and thereby receiving additional benefits.

6. Waiver of Preferential Payment Clawback. As shown in the Statement of Financial Affairs filed by MCLM on September 7, 2011, within 90 days prior to the bankruptcy filing the DePriests received a payment of \$153,568.68 from MCLM.¹⁸ In a typical bankruptcy, such a payment could be clawed back as a preference claim. We are not aware of any preference action being taken by MCLM as the Debtor to claw back this payment.

7. The Several Benefits to the DePriests Have a Substantial Net Present (and Cash) Value. If Choctaw handed a sum of cash to the DePriests in return for their cooperation in this proceeding, there would be no question of the violation of the principles of the Second Thursday doctrine. Council Tree believes the Commission should establish the “cash value” of the benefits provided to the DePriests by adding the sum of the following:

- i. the value of the \$438,102 liability owed by Donald DePriest to SECF that was released by SECF including the value of an early return of capital, plus
- ii. the value of the \$153,568.68 preferential payment made by MCLM to the DePriests within 90 days of the bankruptcy filing, which would ordinarily be subject to being clawed back as a preference claim, plus
- iii. the value of the forbearance of the guarantees (now at 22 months and counting since MCLM declared bankruptcy), including legal and credit impairment costs (in other words, what would a party pay for this delay?), plus

¹⁸ *In re Maritime Communications/Land Mobile, LLC*, No. 11-13463-DWH (Bankr. N.D. Miss. 2011). Statement of Financial Affairs. Document 46, at 2 filed September 7, 2011.

- iv. the value of the DePriests' likely release of their guarantees by the Choctaw principals upon approval of the Choctaw Plan resulting from a prospective Second Thursday approval by the Commission.

Council Tree believes the cash value of these benefits is well in excess of \$5 million and may be closer to \$10 million. That is, figuratively speaking, the "amount of cash in the envelope" that the DePriests are receiving in connection with the sale of MCLM licenses to Choctaw. That in turn represents 17 to 33 percent of the total claims owed by MCLM. No mathematical formulas of which we are aware can transform this into a "minor" or "incidental" benefit. These benefits are, we believe, are the axis of the deal presented by the Inside Parties to the Commission.

III. CONCLUSION

For the reasons stated above, the Commission should deny the Application under the *Second Thursday* doctrine. Council Tree recommends that the Commission expedite any future *Second Thursday* application as it relates to these licenses from a non-related and independent third party proposed assignee, and not Choctaw.

Respectfully submitted,

/s/_____
Steve C. Hillard
George T. Laub
Jonathan B. Glass
Council Tree Investors, Inc.
9271 Jackson Street
Thornton, CO 80229

DECLARATION OF STEPHEN C. HILLARD

I, Stephen C. Hillard, declare under penalty of perjury on this 9th day of May, 2013 that:

1. I have read the foregoing Petition to Deny of Council Tree Investors.
2. This declaration is submitted in support of the Petition to Deny applications in FCC Docket Number WT 13-85.
3. I am the CEO of Council Tree Investors, Inc.
4. The allegations of fact contained in the petition are true to the best of my personal knowledge and belief.

/s/

Stephen C. Hillard

CEO

Council Tree Investors, Inc.

(\$ in millions)



Exhibit B – Additional Background on DePriest Guarantees

Background to Donald DePriest's personal guarantees. Donald DePriest has personally guaranteed \$8.4 million in secured loans, and \$11.1 million in total loans, as per the table below, which information is based on the bankruptcy court filings attached on the following pages.

Secured Creditors with DePriest Guarantees

C. Chris Dupree	2,782,293	Birmingham, AL	2nd Security
R. Hayne Hollis III	2,784,923	Birmingham, AL	2nd Security
Watson and Downs	<u>2,784,923</u>	Birmingham, AL	2nd Security
	8,352,139		

Unsecured Creditors with DePriest Guarantees

Bruce Davis	80,000	Nashville, TN	
Clark & Whitney Bullock	250,000	Pompano Beach, FL	
David Shelton	125,000	Columbus, MS	
Douglas Sellers	48,788	Montgomery, AL	
Fred Goad	191,699	Brentwood, TN	
Harrison Shull	177,000	Nashville, TN	
James Tatum	88,500	Birmingham, AL	
James Teel	310,033	Winter Park, FL	
Justin Shelton	250,000	Columbus, MS	Unsecured Creditors Committee
Lynette Mccary	177,000	Birmingham, AL	
Michael Dunn	97,577	Montgomery, AL	
Retzer Resources	250,000	Greenville, MS	
Sexton, Inc.	367,778	Decatur, AL	Unsecured Creditors Committee
The Maritime Comm Group	110,000	Columbus, MS	
William Isaacson	<u>250,000</u>	Washington, DC	
	2,773,375		
Total Guarantees	11,125,514		

In re **Maritime Communications/Land Mobile, LLC**Case No. **11-13463-DWH**

Debtor

SCHEDULE H - CODEBTORS

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the eight year period immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state, commonwealth, or territory. Include all names used by the nondebtor spouse during the eight years immediately preceding the commencement of this case. If a minor child is a codebtor or a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

☐ Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR
Collateral Plus, LLC 102 Woodmont Blvd., Ste. 302 Nashville, TN 37205	PINNACLE NATIONAL BANK 150 THIRD AVE. S. STE. 800 NASHVILLE, TN 37201
Donald R. DePriest P. O. Box 1076 Columbus, MS 39703	C. CHRIS DUPREE ATT'N: PATRICK B. TRAMMELL P. O. BOX 11063 BIRMINGHAM, AL 35202-1063
Donald R. DePriest P. O. Box 1076 Columbus, MS 39703	R. HAYNE HOLLIS III ATT'N: PATRICK B. TRAMMELL P. O. BOX 11063 BIRMINGHAM, AL 35202-1063
Donald R. DePriest P. O. Box 1076 Columbus, MS 39703	WATSON & DOWNS, LLC ATT'N: PATRICK B. TRAMMELL P. O. BOX 11063 BIRMINGHAM, AL 35202-1063
Donald R. DePriest P. O. Box 1076 Columbus, MS 39703	CLARK AND WHITNEY deR. BULLOCK 1440 S. OCEAN BLVD. POMPANO BEACH, FL 33062
Donald R. DePriest P. O. Box 1076 Columbus, MS 39703	BRUCE A. DAVIS, M.D. 7800 INDIAN SPRINGS DRIVE NASHVILLE, TN 37221
Donald R. DePriest P. O. Box 1076 Columbus, MS 39703	MICHAEL P. DUNN P. O. BOX 241858 MONTGOMERY, AL 36124
Donald R. DePriest P. O. Box 1076 Columbus, MS 39703	FRED C. GOAD 917 STUART LANE BRENTWOOD, TN 37027
Donald R. DePriest P. O. Box 1076 Columbus, MS 39703	DAVID SHELTON 1602 FOREST HILL DRIVE COLUMBUS, MS 39701
Donald R. DePriest P. O. Box 1076 Columbus, MS 39703	DOUGLAS C. SELLERS LAKEWOOD CENTER, STE. 400 2660 EAST CHASE LANE MONTGOMERY, AL 36117
Donald R. DePriest P. O. Box 1076 Columbus, MS 39703	HARRISON J. SHULL M.D. 714 LYNNBROOK RD. NASHVILLE, TN 37215

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continuation sheets attached to Schedule of Codebtors

Debtor

SCHEDULE H - CODEBTORS

(Continuation Sheet)

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR
Donald R. DePriest P. O. Box 1076 Columbus, MS 39703	JAMES L. TEEL 500 N. INTERLACHEN WINTER PARK, FL 32789
Donald R. DePriest P. O. Box 1076 Columbus, MS 39703	JAMES TATUM LOONEY SPRINGS ROAD BIRMINGHAM, AL 35223
Donald R. DePriest P. O. Box 1076 Columbus, MS 39703	JUSTIN SHELTON 811 6TH AVE. N. COLUMBUS, MS 39701
Donald R. DePriest P. O. Box 1076 Columbus, MS 39703	LYNETTE A. MCCARY 2109 WILLIAMSBURG WAY BIRMINGHAM, AL 35223
Donald R. DePriest P. O. Box 1076 Columbus, MS 39703	RETZER RESOURCES P. O. BOX 4457 GREENVILLE, MS 38794
Donald R. DePriest P. O. Box 1076 Columbus, MS 39703	SEXTON, INC. P. O. BOX 369 DECATUR, AL 35602
Donald R. DePriest P. O. Box 1076 Columbus, MS 39703	THE MARITIME COMMUNICATIONS GROUP P. O. BOX 1404: ATTN: SI THOMAS COLUMBUS, MS 39703
Donald R. DePriest P. O. Box 1076 Columbus, MS 39703	WILLIAM ISAACSON 5301 WISCONSIN AVE. N.W. WASHINGTON, DC 20015